D.B. CIVIL WRIT PETITION NO.5945/2005
Sant Ajneshwar Dharmik Trust(Regd)
Vs.
State & Ors.

D.B. CIVIL MISC. CONTEMPT PETITION NO.164/2006
Sant Ajneshwar Dharmik Trust(Regd)
Vs.
Naresh Pal Gangwar & Ors.

Date of Order :: 03-01-2007

HON'BLE THE CHIEF JUSTICE SHRI S.N.JHA
HON'BLE SHRI JUSTICE GOVIND MATHUR

Shri P.S. Bhati, for the petitioner.
Shri N.M. Lodha, AAG for the State.
Shri Vijay Bishnoi, with
Shri Preetam Solanki, for the respondent.

Both the writ petition and the contempt petition shall stand disposed of by this common order.

Reliefs sought in the writ petition which has been filed as a public interest litigation are manifold. In sum and substance, the petitioner seeks direction upon the respondents not to alter the status of land comprising Khasra no.40 of revenue village Jodhpur except for cremation purposes.

It is relevant to mention at the outset that SBCWP no.5993/1993 involving similar controversy with respect to Khasra no.40 was disposed of by this Court taking note of the statements made in para 14 of the reply of the State

to the effect “the answering respondents assure this Court that no person shall be permitted to occupy even an inch of Khasra No.40 for any other purpose than cremation ground”.

It is not in dispute that Khasra no.40 has a total area of 22 bighas 18 biswas out of which 15,492.17 square yards land has been allotted to the Mali Sansthan by the Urban Improvement Trust(UIT), Jodhpur vide allotment order dated 15.1.2003 for use as 'Samashan', that is, cremation ground. It is the common practice in this part of the State to provide separate cremation grounds to different castes and that is how the Mali Sansthan made request to the UIT for allotment of a piece of land where the dead bodies of persons belonging to the Mali Community can be cremated.

When the petition came up for preliminary hearing on 22.11.2005, this Court passed the following order:-

> “Till further hearing, no construction shall be made on any part of the cremation ground bearing Khasra no.40 having area of 22 bighas and 18 biswas.”

The UIT in para 2 of the reply inter alia stated that -

> “As per the record, it is clear that huge construction has been raised and that is totally disregard to the terms of allotment order. Therefore, the

> answering respondent seeks permission and leave of this Hon'ble Court so as to cancel the allotment order and to proceed against the allottee."

Alleging that the interim order of this Court dated 22.11.2005 has been violated by the respondent by permitting construction of a multi storied building (multiplex), the petitioner filed contempt petition i.e. DB civil misc. contempt petition no.164/2006. On receipt of notice, the matter appears to have been examined and the UIT has filed another reply along with application seeking deletion of the aforequoted averments in para 2 of the original reply. The stand of the UIT now is as follows:-

> "the respondent no.3 was not raising construction on the land allotted to it vide allotment order dated 15.1.2003, but was raising construction on adjacent to the allotted land and allotted land is still lying vacant. This fact has also been fortified by the inspection conducted by a team of 4 persons namely; (1) Tehsildar UIT, (2) Tehsildar (Revenue), (3) Patwari, UIT & (4) Patwari (Revenue). Copy of the Fard Moka is submitted herewith and marked as Annexure-A."

It is not in dispute that some construction has been made which according to the UIT is on land beyond the allotted area but part of Khasra no.40. The stand of Mali Sansthan which figures as respondent no.3 in the writ petition on

the other hand is that the construction is on land beyond Khasra no.40. We do not propose to go into the controversy. It is agreed by counsel for the petitioner that if the impugned construction by the respondent is on land beyond khasra no.40, the petitioner would have no grievance against such construction. Counsel however, took a firm stand that construction is on land which is part of khasra no.40.

In fairness to Mali Sansthan we may notice the statement of Shri N.M.Lodha, Additional Advocate General that the Mali Sansthan produced certain documents claiming ownership and title over part of the land of khasra no.40. In response to this we observed in course of hearing that if the Mali community has any independent claim de hors the allotment order with respect to any part of khasra no.40, that cannot be gone into by this Court in present proceeding. Adjudication of any such claim would involve disputed questions of fact, and the appropriate course would be to permit the Sansthan to file suit in the civil court and seek appropriate reliefs. It goes without saying that as and when any suit is brought with respect to khasra no.40, the civil court will examine the matter in right perspectives and decide the dispute on consideration of the evidence - oral as well as documentary - produced by the parties before it. In the present

proceeding, we are simply concerned with the question as to whether the land of khasra no.40 is being used for purpose other than cremation of dead bodies.

It is true that grievance of the petitioner appears to emanate from the allotment order with respect to 15,492.17 square yards i.e. part of khasra no.40 but considering the fact that whole of khasra no.40 can be used only as cremation ground and the State had given a firm assurance to this Court in the previous writ petition that not even an inch of the land would be allowed to be used for purpose other than cremation, we are of the view that it would be appropriate to issue directions with respect to the entire khasra no.40 and not confine it to the allotted area i.e. 15,492.17 square yards land. We have already observed above that if the impugned construction by Mali Community/Sansthan is on land which is not part of khasra no.40, the same would lie outside the scope of the present proceeding. On the other hand if the impugned construction is found to be on part of the khasra no.40, on the strength of any independent claim and the Mali Sansthan is able to establish its claim, it is open to it to file a suit and seek declaration of its rights in the civil court in accordance with law.

This clarification should serve the purpose of this writ petition. Nevertheless before we close the matter, we would like to clarify that the stand of the UIT in para 2 of the reply as aforequoted may not be treated as its final stand. The stand appears to have been taken due to some misunderstanding. The stand of the UIT is that the construction is being made on land which is part of the khasra no.40. In that view of the matter, we do not find any reason to proceed in contempt against the respondents. The basis of contempt petition is the earlier reply of the UIT regarding construction on part of the allotted area. There being no construction on any part of allotted area, we are satisfied that the interim order of this Court has not been violated to warrant any action against the respondents.

In the above premises, we clarify that no construction shall be made on any part of khasra no.40. This order will be subject to adjudication by the civil court in a suit which Mali Sansthan may prefer, as mentioned in the foregoing paragraphs.

In view of the above discussions, while we dispose of the writ petition with observations and directions as mentioned above, the contempt petition is dismissed.

[GOVIND MATHUR],J. [S.N.JHA],CJ.

Praveen